

AMENDED IN ASSEMBLY AUGUST 30, 1999

AMENDED IN ASSEMBLY JULY 15, 1999

AMENDED IN SENATE APRIL 27, 1999

SENATE BILL

No. 75

Introduced by Senator Murray

(Principal coauthor: Assembly Member Villaraigosa)

(Coauthors: Senators Bowen and Vasconcellos)

(Coauthors: Assembly Members Bock, Kuehl, Mazzoni,
Romero, Shelley, and Strom-Martin)

December 7, 1998

An act to add Division 2.5 (commencing with Section 297) to the Family Code, to add Section 1261 to the Health and Safety Code, and to amend Sections 1460, 1811, 1812, 1820, 1821, 1822, 1829, 1861, 1863, 1871, 1873, 1874, 1891, 1895, 2212, 2213, 2357, 2423, 2430, 2504, 2572, 2580, 2614.5, 2622, 2651, 2653, 2681, 2682, 2687, 2700, 2803, 2805, and 6240 of, and to add Section 37 to, the Probate Code, relating to human relationships.

LEGISLATIVE COUNSEL'S DIGEST

SB 75, as amended, Murray. Domestic partnership: registration, termination, and rights thereof.

(1) Existing law sets forth the requirements of a valid marriage, and specifies the rights and obligations of spouses during marriage.

This bill would enact the Domestic Partnership Act of 1999, which would define "domestic partners" and provide for the registration of domestic partnerships with the Secretary of

State. The bill would also specify procedures for the termination of domestic partnerships. The bill would prohibit a person who has filed a Declaration of Domestic Partnership from filing a new declaration until at least 6 months has elapsed from the date that a Notice of Termination of Domestic Partnership was filed with the Secretary of State in connection with the termination of the most recent domestic partnership, except where the previous domestic partnership ended because one of the partners died or married.

The bill would require the Secretary of State to prepare forms for the registration and termination of domestic partnerships, distribute these forms to each county clerk, and establish by regulation and charge fees for processing these forms. The bill would require these forms to be available to the public at the office of the Secretary of State and each county clerk. By increasing the duties of the county clerk, the bill would impose a state-mandated local program.

This bill would specify the legal effect of the creation of a domestic partnership, including the effect on the parties' property rights, and would provide that any domestic partnership entered into outside of this state, which would be valid by the laws of the jurisdiction under which the partnership was created, shall be valid in this state.

This bill would also preempt, on and after July 1, 2000, any local ordinance or law that provides for the creation of a domestic partnership, as specified, except that a local jurisdiction may retain or adopt policies or laws that offer rights to domestic partners or impose duties on 3rd parties regarding domestic partners that are in addition to the rights and duties established by the act, as specified.

(2) Existing law does not specify requirements concerning patient visitation in all health facilities.

This bill would require a health facility to allow a patient's domestic partner and other specified persons to visit a patient, except under specified conditions.

(3) Existing law provides for the establishment of conservatorships.

This bill would revise and recast these provisions regarding conservatorships to provide for the participation of a domestic partner of the conservatee or proposed conservatee in these



proceedings. The bill would require preference for selection of a conservator be given to the domestic partner and a person nominated by the domestic partner. The bill would require that a petition for conservatorship set forth the names and addresses of the domestic partner of the proposed conservatee or the names and addresses of any children of a predeceased domestic partner. The bill would require notice of a conservatorship hearing to be sent to the domestic partner of the proposed conservatee and would authorize the domestic partner to appear at the hearing in support or opposition to the petition. This bill would make conforming changes.

(4) Existing law prescribes a statutory will form.

This bill would revise the statutory will form to, among other things, provide for the inclusion of a domestic partner among the beneficiaries to whom the testator may indicate a desire to leave his or her principal residence, automobiles, household, and personal effects, or residuary estate.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000, shall be made from the State Mandates Claims Fund.

(6) The bill would incorporate additional changes to Sections 2357 and 2580 of the Probate Code proposed by AB 239 to take effect if both bills are enacted and this bill is enacted last.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

SECTION 1. Division 2.5 (commencing with Section 297) is added to the Family Code, to read:

DIVISION 2.5. THE DOMESTIC PARTNERSHIP
ACT OF 1999

PART 1. DEFINITIONS

297. This division shall be known and may be cited as the Domestic Partnership Act of 1999.

297.5. (a) Domestic partners are two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring.

(b) A domestic partnership shall be established when all of the following requirements are met:

(1) Both persons have a common residence.

(2) Both persons agree to be jointly responsible for each other's basic living expenses incurred during the domestic partnership.

(3) Neither person is married or a member of another domestic partnership.

(4) The two persons are not related by blood in a way which would prevent them from being married to each other in this state.

(5) Both persons are at least 18 years of age.

(6) Both persons are capable of consenting to the domestic partnership.

(7) Neither person has previously filed a Declaration of Partnership with the Secretary of State pursuant to this division that has not been terminated under Section 299.

(8) Both file a Declaration of Domestic Partnership with the Secretary of State pursuant to this division.

(c) "Have a common residence" means that both domestic partners share the same residence. It is not necessary that the legal right to possess the common residence be in both of their names. Two people have a common residence even if one or both have additional residences. Domestic partners do not cease to have a

1 common residence if one leaves the common residence
2 but intends to return.

3 (d) “Basic living expenses” means food, shelter,
4 utilities, and all other costs directly related to the
5 maintenance of the common household of the common
6 residence of the domestic partners. It also means any
7 other cost, such as medical care, if some or all of the cost
8 is paid as a benefit because a person is another person’s
9 domestic partner.

10 (e) “Joint responsibility” means that each partner
11 agrees to provide for the other partner’s basic living
12 expenses if the partner is unable to provide for herself or
13 himself. Persons to whom these expenses are owed can
14 enforce this responsibility if, extending credit or
15 providing goods or services, they relied on both the
16 existence of the domestic partnership and the agreement
17 of both partners to be jointly responsible for those specific
18 expenses.

19
20 PART 2. REGISTRATION
21

22 298. (a) The Secretary of State shall prepare forms
23 entitled “Declaration of Domestic Partnership,” and
24 “Notice of Termination of Domestic Partnership” to
25 meet the requirements of this division. These forms shall
26 require the signature and seal of an acknowledgment by
27 a notary public to be binding and valid.

28 (b) (1) The Secretary of State shall distribute these
29 forms to each county clerk. These forms shall be available
30 to the public at the office of the Secretary of State and
31 each county clerk.

32 (2) The Secretary of State shall, by regulation,
33 establish fees for the actual costs of processing each of
34 these forms, and shall charge these fees to persons filing
35 the forms.

36 (c) The Declaration of Domestic Partnership shall
37 require each person who wants to become a domestic
38 partner to (1) state that he or she meets the requirements
39 of Section 297.5 at the time the form is signed, (2) provide
40 a mailing address, (3) sign the form under penalty of

1 perjury, and (4) have a notary public notarize his or her
2 signature by acknowledgment. Both partners' signatures
3 shall be affixed to one Declaration of Domestic
4 Partnership form, which form shall then be transmitted
5 to the Secretary of State according to the instructions
6 provided on the form.

7 298.5. (a) Two persons desiring to become domestic
8 partners may complete and file a Declaration of
9 Domestic Partnership with the Secretary of State.

10 (b) The Secretary of State shall register the
11 Declaration of Domestic Partnership in a registry for
12 those partnerships, and shall return a copy of the
13 registered form to the domestic partners at the address
14 provided by the domestic partners as their common
15 residence.

16 (c) No person who has filed a Declaration of Domestic
17 Partnership may file a new Declaration of Domestic
18 Partnership until at least six months after the date that a
19 Notice of Termination of Domestic Partnership was filed
20 with the Secretary of State pursuant to subdivision (b) of
21 Section 299 in connection with the termination of the
22 most recent domestic partnership. This prohibition shall
23 not apply if the previous domestic partnership ended
24 because one of the partners died or married.

25

26 PART 3. TERMINATION

27

28 299. (a) A domestic partnership is terminated when
29 any one of the following occurs:

30 (1) One partner gives or sends to the other partner a
31 written notice by certified mail that he or she is
32 terminating the partnership.

33 (2) One of the domestic partners dies.

34 (3) One of the domestic partners marries.

35 (4) The domestic partners no longer have a common
36 residence.

37 (b) Upon termination of a domestic partnership, at
38 least one former partner shall file a Notice of Termination
39 of Domestic Partnership with the Secretary of State by
40 mailing a completed form to the Secretary of State by



1 certified mail. The date on which the Notice of
2 Termination of Domestic Partnership is received by the
3 Secretary of State shall be deemed the actual termination
4 date of the domestic partnership, unless termination is
5 caused by the death or marriage of a domestic partner, in
6 which case the actual termination date shall be the date
7 indicated on the Notice of Termination of Domestic
8 Partnership form. The partner who files the Notice of
9 Termination of Domestic Partnership shall send a copy of
10 the notice to the last known address of the other partner.

11 (c) A former domestic partner who has given a copy
12 of a Declaration of Domestic Partnership to any third
13 party in order to qualify for any benefit or right shall,
14 within 60 days of termination of the domestic partnership,
15 give or send to the third party, at the last known address
16 of the third party, written notification that the domestic
17 partnership has been terminated. A third party who
18 suffers a loss as a result of failure by the domestic partner
19 to send this notice shall be entitled to seek recovery from
20 the partner who was obligated to send it for any actual loss
21 resulting thereby.

22 (d) Failure to provide the third party notice required
23 in subdivision (c) shall not delay or prevent the
24 termination of the domestic partnership.

25
26 PART 4. LEGAL EFFECT
27

28 299.5. (a) The obligations that two people have to
29 each other as a result of creating a domestic partnership
30 are those described in Section 297.5. Registration as a
31 domestic partner under this division shall not be evidence
32 of, or establish, any rights existing under law other than
33 those expressly provided to domestic partners in this
34 division, Section 1261 of the Health and Safety Code, or
35 the Probate Code relating to bequests, conservatorships,
36 health facility visitation rights, and support for basic
37 living expenses.

38 The provisions relating to domestic partners provided
39 in this division, Section 1261 of the Health and Safety

1 Code, and the Probate Code shall not diminish any right
2 under any other provision of law.

3 (b) Upon the termination of a domestic partnership,
4 the partners, from that time forward, shall incur none of
5 the obligations to each other as domestic partners that are
6 created by this division, Section 1261 of the Health and
7 Safety Code, or the Probate Code relating to domestic
8 partners.

9 (c) The filing of a Declaration of Domestic
10 Partnership pursuant to this division shall not change the
11 character of property, real or personal, or interest in real
12 or personal property owned by either domestic partner
13 or both of them prior to the date of filing of the
14 declaration.

15 (d) The formation of a domestic partnership under
16 this division shall not, in and of itself, create any interest
17 in or rights to, any property, real or personal, owned by
18 one partner in the other partner, including, but not
19 limited to, any rights similar to community property
20 rights or “palimony” rights under common law.

21 (e) Any property or interest acquired by the partners
22 during the domestic partnership where title is shared
23 shall be held by the partners in the proportion of interest
24 assigned to each partner at the time the property or
25 interest was acquired, unless otherwise expressly agreed
26 in writing by both parties. Upon termination of the
27 domestic partnership, this subdivision shall govern the
28 division of any property jointly acquired by the partners.

29 (f) The formation of a domestic partnership under this
30 division shall not change the individual income or estate
31 tax liability of each partner prior to and during the
32 partnership, unless otherwise provided under another
33 state or federal law or regulation.

34 (g) Any domestic partnership entered into outside of
35 this state, which would be valid by the laws of the
36 jurisdiction under which the partnership was created,
37 shall be valid in this state.

38

PART 5. PREEMPTION

299.6. (a) Any local ordinance or law that provides for the creation of a “domestic partnership” shall be preempted on and after July 1, 2000, except as provided in subdivision (c).

(b) Domestic partnerships created under any local domestic partnership ordinance or law before July 1, 2000, shall remain valid. On and after July 1, 2000, domestic partnerships previously established under a local ordinance or law shall be governed by this division and the rights and duties of the partners shall be those set out in this division, except as provided in subdivision (c), provided a Declaration of Domestic Partnership is filed by the domestic partners under Section 298.5.

(c) Any local jurisdiction may retain or adopt ordinances, policies, or laws that offer rights to domestic partners or impose duties upon third parties regarding domestic partners that are in addition to the rights and duties set out in this division, and the local rights may be conditioned upon the agreement of the domestic partners to assume the additional obligations set forth in this subdivision.

SEC. 2. Section 1261 is added to the Health and Safety Code, to read:

1261. (a) A health facility shall allow a patient’s domestic partner, the children of the patient’s domestic partner, and the domestic partner of the patient’s parent or child to visit, unless one of the following is met:

(1) No visitors are allowed.

(2) The facility reasonably determines that the presence of a particular visitor would endanger the health or safety of a patient, member of the health facility staff, or other visitor to the health facility, or would significantly disrupt the operations of a facility.

(3) The patient has indicated to health facility staff that the patient does not want this person to visit.

(b) This section may not be construed to prohibit a health facility from otherwise establishing reasonable

1 restrictions upon visitation, including restrictions upon
2 the hours of visitation and number of visitors.

3 (c) As used in this section, “domestic partner” has the
4 meaning provided in Section 37 of the Probate Code.

5 SEC. 3. Section 37 is added to the Probate Code, to
6 read:

7 37. “Domestic partner” means a person who has filed
8 a “Declaration of Domestic Partnership” with the
9 Secretary of State pursuant to Division 2.5 (commencing
10 with Section 297) of the Family Code as long as that
11 domestic partnership has not been terminated pursuant
12 to Section 299 of the Family Code.

13 SEC. 4. Section 1460 of the Probate Code is amended
14 to read:

15 1460. (a) Subject to Sections 1202 and 1203, if notice
16 of hearing is required under this division but the
17 applicable provision does not fix the manner of giving
18 notice of hearing, the notice of the time and place of the
19 hearing shall be given at least 15 days before the day of
20 the hearing as provided in this section.

21 (b) Subject to subdivision (e), the petitioner, who
22 includes for the purposes of this section a person filing a
23 petition, report, or account, shall cause the notice of
24 hearing to be mailed to each of the following persons:

25 (1) The guardian or conservator.

26 (2) The ward or the conservatee.

27 (3) The spouse of the ward or conservatee, if the ward
28 or conservatee has a spouse, or the domestic partner of
29 the conservatee, if the conservatee has a domestic
30 partner.

31 (4) Any person who has requested special notice of the
32 matter, as provided in Section 2700.

33 (5) For any hearing on a petition to terminate a
34 guardianship, to accept the resignation of, or to remove
35 the guardian, the persons described in subdivision (c) of
36 Section 1510.

37 (6) For any hearing on a petition to terminate a
38 conservatorship, to accept the resignation of, or to
39 remove the conservator, the persons described in
40 subdivision (b) of Section 1821.



1 (c) The clerk of the court shall cause the notice of the
2 hearing to be posted as provided in Section 1230 if the
3 posting is required by subdivision (c) of Section 2543
4 (sales).

5 (d) Except as provided in subdivision (e), nothing in
6 this section excuses compliance with the requirements
7 for notice to a person who has requested special notice
8 pursuant to Chapter 10 (commencing with Section 2700)
9 of Part 4.

10 (e) The court for good cause may dispense with the
11 notice otherwise required to be given to a person as
12 provided in this section.

13 SEC. 5. Section 1811 of the Probate Code is amended
14 to read:

15 1811. (a) The spouse, domestic partner, or an adult
16 child, parent, brother, or sister of the proposed
17 conservatee may nominate a conservator in the petition
18 or at the hearing on the petition.

19 (b) The spouse, domestic partner, or a parent of the
20 proposed conservatee may nominate a conservator in a
21 writing signed either before or after the petition is filed
22 and that nomination remains effective notwithstanding
23 the subsequent legal incapacity or death of the spouse,
24 domestic partner, or parent, except that a nomination by
25 the spouse becomes void upon dissolution or an
26 adjudication of nullity of their marriage and a nomination
27 by a domestic partner becomes void upon termination of
28 the domestic partnership.

29 SEC. 6. Section 1812 of the Probate Code is amended
30 to read:

31 1812. (a) Subject to Sections 1810 and 1813, the
32 selection of a conservator of the person or estate, or both,
33 is solely in the discretion of the court and, in making the
34 selection, the court is to be guided by what appears to be
35 for the best interests of the proposed conservatee.

36 (b) Subject to Sections 1810 and 1813, of persons
37 equally qualified in the opinion of the court to
38 appointment as conservator of the person or estate or
39 both, preference is to be given in the following order:

1 (1) The spouse or domestic partner of the proposed
2 conservatee or the person nominated by the spouse or
3 domestic partner pursuant to Section 1811.

4 (2) An adult child of the proposed conservatee or the
5 person nominated by the child pursuant to Section 1811.

6 (3) A parent of the proposed conservatee or the
7 person nominated by the parent pursuant to Section 1811.

8 (4) A brother or sister of the proposed conservatee or
9 the person nominated by the brother or sister pursuant
10 to Section 1811.

11 (5) Any other person or entity eligible for
12 appointment as a conservator under this code or, if there
13 is no such person or entity willing to act as a conservator,
14 under the Welfare and Institutions Code.

15 (c) The preference for any nominee for appointment
16 under paragraphs (2), (3), and (4) of subdivision (b) is
17 subordinate to the preference for any other parent, child,
18 brother, or sister in that class.

19 SEC. 7. Section 1820 of the Probate Code is amended
20 to read:

21 1820. (a) A petition for the appointment of a
22 conservator may be filed by any of the following:

23 (1) The proposed conservatee.

24 (2) The spouse or domestic partner of the proposed
25 conservatee.

26 (3) A relative of the proposed conservatee.

27 (4) Any interested state or local entity or agency of this
28 state or any interested public officer or employee of this
29 state or of a local public entity of this state.

30 (5) Any other interested person or friend of the
31 proposed conservatee.

32 (b) If the proposed conservatee is a minor, the petition
33 may be filed during his or her minority so that the
34 appointment of a conservator may be made effective
35 immediately upon the minor's attaining the age of
36 majority. An existing guardian of the minor may be
37 appointed as conservator under this part upon the
38 minor's attaining the age of majority, whether or not the
39 guardian's accounts have been settled.

(c) A creditor of the proposed conservatee may not file a petition for appointment of a conservator unless the creditor is a person described in paragraph (2), (3), or (4) of subdivision (a).

SEC. 8. Section 1821 of the Probate Code is amended to read:

1821. (a) The petition shall request that a conservator be appointed for the person or estate, or both, shall specify the name, address, and telephone number of the proposed conservator and the name, address, and telephone number of the proposed conservatee, and state the reasons why a conservatorship is necessary. Unless the petitioner is a bank or other entity authorized to conduct the business of a trust company, the petitioner shall also file supplemental information as to why the appointment of a conservator is required. The supplemental information to be submitted shall include a brief statement of facts addressed to each of the following categories:

(1) The inability of the proposed conservatee to properly provide for his or her needs for physical health, food, clothing, and shelter.

(2) The location of the proposed conservatee's residence and the ability of the proposed conservatee to live in the residence while under conservatorship.

(3) Alternatives to conservatorship considered by the petitioner and reasons why those alternatives are not available.

(4) Health or social services provided to the proposed conservatee during the year preceding the filing of the petition, when the petitioner has information as to those services.

(5) The inability of the proposed conservatee to substantially manage his or her own financial resources, or to resist fraud or undue influence.

The facts required to address the categories set forth in paragraphs (1) to (5), inclusive, shall be set forth by the petitioner when he or she has knowledge of the facts or by the declarations or affidavits of other persons having knowledge of those facts.

1 Where any of the categories set forth in paragraphs (1)
2 to (5), inclusive, are not applicable to the proposed
3 conservatorship, the petitioner shall so indicate and state
4 on the supplemental information form the reasons
5 therefor.

6 The Judicial Council shall develop a supplemental
7 information form for the information required pursuant
8 to paragraphs (1) to (5), inclusive, after consultation with
9 individuals or organizations approved by the Judicial
10 Council, who represent public conservators, court
11 investigators, the State Bar, specialists with experience in
12 performing assessments and coordinating
13 community-based services, and legal services for the
14 elderly and disabled.

15 The supplemental information form shall be separate
16 and distinct from the form for the petition. The
17 supplemental information shall be confidential and shall
18 be made available only to parties, persons given notice of
19 the petition who have requested this supplemental
20 information or who have appeared in the proceedings,
21 their attorneys, and the court. The court shall have
22 discretion at any other time to release the supplemental
23 information to other persons if it would serve the interests
24 of the conservatee. The county clerk shall make provision
25 for limiting disclosure of the supplemental information
26 exclusively to persons entitled thereto under this section.

27 (b) The petition shall set forth, so far as they are known
28 to the petitioner, the names and addresses of the spouse
29 or domestic partner, and of the relatives of the proposed
30 conservatee within the second degree. If no spouse or
31 domestic partner of the proposed conservatee, or
32 relatives of the proposed conservatee within the second
33 degree are known to the petitioner, the petition shall set
34 forth, so far as they are known to the petitioner, the names
35 and addresses of the following persons who, for the
36 purposes of Section 1822, shall all be deemed to be
37 relatives:

38 (1) A spouse or domestic partner of a predeceased
39 parent of a proposed conservatee.



1 (2) The children of a predeceased spouse or domestic
2 partner of a proposed conservatee.

3 (3) The siblings of the proposed conservatee's parents,
4 if any, but if none, then the natural and adoptive children
5 of the proposed conservatee's parents' siblings.

6 (4) The natural and adoptive children of the proposed
7 conservatee's siblings.

8 (c) If the petition is filed by a person other than the
9 proposed conservatee, the petition shall state whether or
10 not the petitioner is a creditor or debtor, or the agent of
11 a creditor or debtor, of the proposed conservatee.

12 (d) If the proposed conservatee is a patient in or on
13 leave of absence from a state institution under the
14 jurisdiction of the State Department of Mental Health or
15 the State Department of Developmental Services and
16 that fact is known to the petitioner, the petition shall state
17 that fact and name the institution.

18 (e) The petition shall state, so far as is known to the
19 petitioner, whether or not the proposed conservatee is
20 receiving or is entitled to receive benefits from the
21 Veterans Administration and the estimated amount of
22 the monthly benefit payable by the Veterans
23 Administration for the proposed conservatee.

24 (f) The petition may include an application for any
25 order or orders authorized under this division, including,
26 but not limited to, orders under Chapter 4 (commencing
27 with Section 1870).

28 (g) The petition may include a further statement that
29 the proposed conservatee is not willing to attend the
30 hearing on the petition, does not wish to contest the
31 establishment of the conservatorship, and does not object
32 to the proposed conservator or prefer that another person
33 act as conservator.

34 (h) In the case of an allegedly developmentally
35 disabled adult the petition shall set forth the following:

36 (1) The nature and degree of the alleged disability, the
37 specific duties and powers requested by or for the limited
38 conservator, and the limitations of civil and legal rights
39 requested to be included in the court's order of
40 appointment.

1 (2) Whether or not the proposed limited conservatee
2 is or is alleged to be developmentally disabled.

3 Reports submitted pursuant to Section 416.8 of the
4 Health and Safety Code meet the requirements of this
5 section, and conservatorships filed pursuant to Article 7.5
6 (commencing with Section 416) of Part 1 of Division 1 of
7 the Health and Safety Code are exempt from providing
8 the supplemental information required by this section, so
9 long as the guidelines adopted by the State Department
10 of Developmental Services for regional centers require
11 the same information which is required pursuant to this
12 section.

13 SEC. 9. Section 1822 of the Probate Code is amended
14 to read:

15 1822. (a) At least 15 days before the hearing on the
16 petition for appointment of a conservator, notice of the
17 time and place of the hearing shall be given as provided
18 in this section. The notice shall be accompanied by a copy
19 of the petition. The court may not shorten the time for
20 giving the notice of hearing under this section.

21 (b) Notice shall be mailed to the following persons:

22 (1) The spouse, if any, or domestic partner, if any, of
23 the proposed conservatee at the address stated in the
24 petition.

25 (2) The relatives named in the petition at their
26 addresses stated in the petition.

27 (c) If notice is required by Section 1461 to be given to
28 the Director of Mental Health or the Director of
29 Developmental Services, notice shall be mailed as so
30 required.

31 (d) If the petition states that the proposed conservatee
32 is receiving or is entitled to receive benefits from the
33 Veterans Administration, notice shall be mailed to the
34 office of the Veterans Administration referred to in
35 Section 1461.5.

36 (e) If the proposed conservatee is a person with
37 developmental disabilities, at least 30 days before the day
38 of the hearing on the petition, the petitioner shall mail a
39 notice of the hearing and a copy of the petition to the
40 regional center identified in Section 1827.5.



SEC. 10. Section 1829 of the Probate Code is amended to read:

1829. Any of the following persons may appear at the hearing to support or oppose the petition:

(a) The proposed conservatee.

(b) The spouse or domestic partner of the proposed conservatee.

(c) A relative of the proposed conservatee.

(d) Any interested person or friend of the proposed conservatee.

SEC. 11. Section 1861 of the Probate Code is amended to read:

1861. (a) A petition for the termination of the conservatorship may be filed by any of the following:

(1) The conservator.

(2) The conservatee.

(3) The spouse, or domestic partner, or any relative or friend of the conservatee or other interested person.

(b) The petition shall state facts showing that the conservatorship is no longer required.

SEC. 12. Section 1863 of the Probate Code is amended to read:

1863. (a) The court shall hear and determine the matter according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded. The conservator, the conservatee, or the spouse, or domestic partner, or any relative or friend of the conservatee or other interested person may appear and support or oppose the petition.

(b) If the court determines that the conservatorship is no longer required or that grounds for establishment of a conservatorship of the person or estate, or both, no longer exist, the court shall make this finding and shall enter judgment terminating the conservatorship accordingly.

(c) At the hearing, or thereafter on further notice and hearing, the conservator may be discharged and the bond given by the conservator may be exonerated upon the settlement and approval of the conservator's final account by the court.

(d) Termination of conservatorship does not preclude a new proceeding for appointment of a conservator on the same or other grounds.

SEC. 13. Section 1871 of the Probate Code is amended to read:

1871. Nothing in this article shall be construed to deny a conservatee any of the following:

(a) The right to control an allowance provided under Section 2421.

(b) The right to control wages or salary to the extent provided in Section 2601.

(c) The right to make a will.

(d) The right to enter into transactions to the extent reasonable to provide the necessities of life to the conservatee and the spouse and minor children of the conservatee and to provide the basic living expenses, as defined in Section 297.5 of the Family Code, to the domestic partner of the conservatee.

SEC. 14. Section 1873 of the Probate Code is amended to read:

1873. (a) In the order appointing the conservator or upon a petition filed under Section 1874, the court may by order authorize the conservatee, subject to Section 1876, to enter into transactions or types of transactions as may be appropriate in the circumstances of the particular conservatee and conservatorship estate. The court, by order, may modify the legal capacity a conservatee would otherwise have under Section 1872 by broadening or restricting the power of the conservatee to enter into transactions or types of transactions as may be appropriate in the circumstances of the particular conservatee and conservatorship estate.

(b) In an order made under this section, the court may include limitations or conditions on the exercise of the authority granted to the conservatee as the court determines to be appropriate including, but not limited to, the following:

(1) A requirement that for specific types of transactions or for all transactions authorized by the order, the conservatee obtain prior approval of the

1 transaction by the court or conservator before exercising
2 the authority granted by the order.

3 (2) A provision that the conservator has the right to
4 avoid any transaction made by the conservatee pursuant
5 to the authority of the order if the transaction is not one
6 into which a reasonably prudent person might enter.

7 (c) The court, in its discretion, may provide in the
8 order that, unless extended by subsequent order of the
9 court, the order or specific provisions of the order
10 terminate at a time specified in the order.

11 (d) An order under this section continues in effect
12 until the earliest of the following times:

13 (1) The time specified in the order, if any.

14 (2) The time the order is modified or revoked.

15 (3) The time the conservatorship of the estate is
16 terminated.

17 (e) An order under this section may be modified or
18 revoked upon petition filed by the conservator,
19 conservatee, the spouse or domestic partner of the
20 conservatee, or any relative or friend of the conservatee,
21 or any interested person. Notice of the hearing on the
22 petition shall be given for the period and in the manner
23 provided in Chapter 3 (commencing with Section 1460)
24 of Part 1.

25 SEC. 15. Section 1874 of the Probate Code is amended
26 to read:

27 1874. (a) After a conservator has been appointed, a
28 petition requesting an order under Section 1873 may be
29 filed by any of the following:

30 (1) The conservator.

31 (2) The conservatee.

32 (3) The spouse, domestic partner, or any relative or
33 friend of the conservatee.

34 (b) Notice of the hearing on the petition shall be given
35 for the period and in the manner provided in Chapter 3
36 (commencing with Section 1460) of Part 1.

37 SEC. 16. Section 1891 of the Probate Code is amended
38 to read:

39 1891. (a) A petition may be filed under this article
40 requesting that the court make an order under Section

1 1880 or that the court modify or revoke an order made
2 under Section 1880. The petition shall state facts showing
3 that the order requested is appropriate.

4 (b) The petition may be filed by any of the following:

5 (1) The conservator.

6 (2) The conservatee.

7 (3) The spouse, domestic partner, or any relative or
8 friend of the conservatee.

9 (c) The petition shall set forth, so far as they are known
10 to the petitioner, the names and addresses of the spouse
11 or domestic partner and of the relatives of the
12 conservatee within the second degree.

13 SEC. 17. Section 1895 of the Probate Code is amended
14 to read:

15 1895. (a) The conservatee, the spouse, the domestic
16 partner, any relative, or any friend of the conservatee, the
17 conservator, or any other interested person may appear
18 at the hearing to support or oppose the petition.

19 (b) Except where the conservatee is absent from the
20 hearing and is not required to attend the hearing under
21 the provisions of Section 1893 and any showing required
22 by Section 1893 has been made, the court shall, prior to
23 granting the petition, inform the conservatee of all of the
24 following:

25 (1) The nature and purpose of the proceeding.

26 (2) The nature and effect on the conservatee's basic
27 rights of the order requested.

28 (3) The conservatee has the right to oppose the
29 petition, to be represented by legal counsel if the
30 conservatee so chooses, and to have legal counsel
31 appointed by the court if unable to retain legal counsel.

32 (c) After the court informs the conservatee of the
33 matters listed in subdivision (b) and prior to granting the
34 petition, the court shall consult the conservatee to
35 determine the conservatee's opinion concerning the
36 order requested in the petition.

37 SEC. 18. Section 2212 of the Probate Code is amended
38 to read:

39 2212. The petition for transfer may be filed only by
40 one or more of the following:

1 (a) The guardian or conservator.

2 (b) The ward or conservatee.

3 (c) The spouse of the ward or the spouse or domestic
4 partner of the conservatee.

5 (d) A relative or friend of the ward or conservatee.

6 (e) Any other interested person.

7 SEC. 19. Section 2213 of the Probate Code is amended
8 to read:

9 2213. The petition for transfer shall set forth all of the
10 following:

11 (a) The county to which the proceeding is to be
12 transferred.

13 (b) The name and address of the ward or conservatee.

14 (c) A brief description of the character, value, and
15 location of the property of the ward or conservatee.

16 (d) The reasons for the transfer.

17 (e) The names and addresses, so far as they are known
18 to the petitioner, of the spouse and of the relatives of the
19 ward within the second degree, or of the spouse or
20 domestic partner and of the relatives of the conservatee
21 within the second degree.

22 (f) The name and address of the guardian or
23 conservator if other than the petitioner.

24 SEC. 20. Section 2357 of the Probate Code is amended
25 to read:

26 2357. (a) As used in this section:

27 (1) “Guardian or conservator” includes a temporary
28 guardian of the person or a temporary conservator of the
29 person.

30 (2) “Ward or conservatee” includes a person for whom
31 a temporary guardian of the person or temporary
32 conservator of the person has been appointed.

33 (b) If the ward or conservatee requires medical
34 treatment for an existing or continuing medical condition
35 which is not authorized to be performed upon the ward
36 or conservatee under Section 2252, 2353, 2354, or 2355,
37 and the ward or conservatee is unable to give an informed
38 consent to this medical treatment, the guardian or
39 conservator may petition the court under this section for
40 an order authorizing the medical treatment and

1 authorizing the guardian or conservator to consent on
2 behalf of the ward or conservatee to the medical
3 treatment.

4 (c) The petition shall state, or set forth by medical
5 affidavit attached thereto, all of the following so far as is
6 known to the petitioner at the time the petition is filed:

7 (1) The nature of the medical condition of the ward or
8 conservatee which requires treatment.

9 (2) The recommended course of medical treatment
10 which is considered to be medically appropriate.

11 (3) The threat to the health of the ward or conservatee
12 if authorization to consent to the recommended course of
13 treatment is delayed or denied by the court.

14 (4) The predictable or probable outcome of the
15 recommended course of treatment.

16 (5) The medically available alternatives, if any, to the
17 course of treatment recommended.

18 (6) The efforts made to obtain an informed consent
19 from the ward or conservatee.

20 (d) Upon the filing of the petition, the court shall
21 notify the attorney of record for the ward or conservatee,
22 if any, or shall appoint the public defender or private
23 counsel under Section 1471, to consult with and represent
24 the ward or conservatee at the hearing on the petition
25 and, if that appointment is made, Section 1472 applies.

26 (e) The hearing on the petition may be held pursuant
27 to an order of the court prescribing the notice to be given
28 of the hearing. The order shall specify the period of notice
29 of the hearing and the period so fixed shall take into
30 account (1) the existing medical facts and circumstances
31 set forth in the petition or in a medical affidavit attached
32 to the petition or in a medical affidavit presented to the
33 court and (2) the desirability, where the condition of the
34 ward or conservatee permits, of giving adequate notice
35 to all interested persons.

36 (f) A copy of the notice of hearing or of the order
37 prescribing notice of hearing, and a copy of the petition,
38 shall be personally served or mailed, as prescribed in the
39 order, on all of the following:

40 (1) The ward or conservatee.



(2) The attorney of record for the ward or conservatee, if any, or the attorney appointed by the court to represent the ward or conservatee at the hearing.

(3) Such other persons, if any, as the court in its discretion may require in the order, which may include the spouse of the ward, the spouse or domestic partner of the conservatee, and any known relatives of the ward or conservatee within the second degree.

(g) Notwithstanding subdivisions (e) and (f), the matter may be submitted for the determination of the court upon proper and sufficient medical affidavits or declarations if the attorney for the petitioner and the attorney for the ward or conservatee so stipulate and further stipulate that there remains no issue of fact to be determined.

(h) The court may make an order authorizing the recommended course of medical treatment of the ward or conservatee and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to the recommended course of medical treatment for the ward or conservatee if the court determines from the evidence all of the following:

(1) The existing or continuing medical condition of the ward or conservatee requires the recommended course of medical treatment.

(2) If untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the physical or mental health of the ward or conservatee.

(3) The ward or conservatee is unable to give an informed consent to the recommended course of treatment.

(i) Upon petition of the ward or conservatee or other interested person, the court may order that the guardian or conservator obtain or consent to, or obtain and consent to, specified medical treatment to be performed upon the ward or conservatee. Notice of the hearing on the petition under this subdivision shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

1 SEC. 20.5. Section 2357 of the Probate Code is
2 amended to read:

3 2357. (a) As used in this section:

4 (1) “Guardian or conservator” includes a temporary
5 guardian of the person or a temporary conservator of the
6 person.

7 (2) “Ward or conservatee” includes a person for whom
8 a temporary guardian of the person or temporary
9 conservator of the person has been appointed.

10 (b) If the ward or conservatee requires medical
11 treatment for an existing or continuing medical condition
12 which is not authorized to be performed upon the ward
13 or conservatee under Section 2252, 2353, 2354, or 2355,
14 and the ward or conservatee is unable to give an informed
15 consent to ~~such~~ this medical treatment, the guardian or
16 conservator may petition the court under this section for
17 an order authorizing ~~such~~ the medical treatment and
18 authorizing the guardian or conservator to consent on
19 behalf of the ward or conservatee to ~~such~~ the medical
20 treatment.

21 (c) The petition shall state, or set forth by medical
22 affidavit attached thereto, all of the following so far as is
23 known to the petitioner at the time the petition is filed:

24 (1) The nature of the medical condition of the ward or
25 conservatee which requires treatment.

26 (2) The recommended course of medical treatment
27 which is considered to be medically appropriate.

28 (3) The threat to the health of the ward ~~or~~, the spouse
29 or domestic partner of the conservatee if authorization to
30 consent to the recommended course of treatment is
31 delayed or denied by the court.

32 (4) The predictable or probable outcome of the
33 recommended course of treatment.

34 (5) The medically available alternatives, if any, to the
35 course of treatment recommended.

36 (6) The efforts made to obtain an informed consent
37 from the ward or conservatee.

38 (7) *The name and addresses, so far as they are known*
39 *to the petitioner, of the persons specified in subdivision*
40 *(c) of Section 1510 in a guardianship proceeding or*

1 subdivision (b) of Section 1821 in a conservatorship
2 proceeding.

3 (d) Upon the filing of the petition, ~~the court shall~~
4 ~~notify the attorney of record for the ward or conservatee,~~
5 ~~if any, or unless an attorney is already appointed the court~~
6 shall appoint the public defender or private counsel
7 under Section 1471, to consult with and represent the
8 ward or conservatee at the hearing on the petition and,
9 if that appointment is made, Section 1472 applies.

10 (e) ~~The hearing on the petition may be held pursuant~~
11 ~~to an order of the court prescribing the notice to be given~~
12 ~~of the hearing. The order shall specify the period of notice~~
13 ~~of the hearing and the period so fixed shall take into~~
14 ~~account (1) the Notice of the Petition shall be given as~~
15 follows:

16 (1) Not less than 15 days before the hearing, notice of
17 the time and place of the hearing, and a copy of the
18 petition shall be personally served on the ward, if 12 years
19 of age or older, or the conservatee, and on the attorney
20 for the ward or conservatee.

21 (2) Not less than 15 days before the hearing, notice of
22 the time and place of the hearing, and a copy of the
23 petition shall be mailed to the following persons:

24 (A) The spouse or domestic partner, if any, of the
25 proposed conservatee at the address stated in the
26 petition.

27 (B) The relatives named in the petition at their
28 addresses stated in the petition.

29 (f) For good cause, the court may shorten or waive
30 notice of the hearing as provided by this section. In
31 determining the period of notice to be required, the court
32 shall take into account both of the following:

33 (1) The existing medical facts and circumstances set
34 forth in the petition or in a medical affidavit attached to
35 the petition or in a medical affidavit presented to the
36 court ~~and (2) the~~.

37 (2) The desirability, where the condition of the ward
38 or conservatee permits, of giving adequate notice to all
39 interested persons.

~~(f) A copy of the notice of hearing or of the order prescribing notice of hearing, and a copy of the petition, shall be personally served or mailed, as prescribed in the order, on all of the following:~~

~~(1) The ward or conservatee.~~

~~(2) The attorney of record for the ward or conservatee, if any, or the attorney appointed by the court to represent the ward or conservatee at the hearing.~~

~~(3) Such other persons, if any, as the court in its discretion may require in the order, which may include the spouse of the ward or conservatee and any known relatives of the ward or conservatee within the second degree.~~

(g) Notwithstanding subdivisions (e) and (f), the matter may be submitted for the determination of the court upon proper and sufficient medical affidavits or declarations if the attorney for the petitioner and the attorney for the ward or conservatee so stipulate and further stipulate that there remains no issue of fact to be determined.

(h) The court may make an order authorizing the recommended course of medical treatment of the ward or conservatee and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to the recommended course of medical treatment for the ward or conservatee if the court determines from the evidence all of the following:

(1) The existing or continuing medical condition of the ward or conservatee requires the recommended course of medical treatment.

(2) If untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the physical or mental health of the ward or conservatee.

(3) The ward or conservatee is unable to give an informed consent to the recommended course of treatment.

(i) Upon petition of the ward or conservatee or other interested person, the court may order that the guardian or conservator obtain or consent to, or obtain and consent

1 to, specified medical treatment to be performed upon the
2 ward or conservatee. Notice of the hearing on the petition
3 under this subdivision shall be given for the period and in
4 the manner provided in Chapter 3 (commencing with
5 Section 1460) of Part 1.

6 SEC. 21. Section 2423 of the Probate Code is amended
7 to read:

8 2423. (a) Upon petition of the conservator, the
9 conservatee, the spouse or domestic partner of the
10 conservatee, or a relative within the second degree of the
11 conservatee, the court may by order authorize or direct
12 the conservator to pay and distribute surplus income of
13 the estate or any part of the surplus income (not used for
14 the support, maintenance, and education of the
15 conservatee and of those legally entitled to support,
16 maintenance, or education from the conservatee) to the
17 spouse or domestic partner of the conservatee and to
18 relatives within the second degree of the conservatee
19 whom the conservatee would, in the judgment of the
20 court, have aided but for the existence of the
21 conservatorship. The court in ordering payments under
22 this section may impose conditions if the court
23 determines that the conservatee would have imposed the
24 conditions if the conservatee had the capacity to act.

25 (b) The granting of the order and the amounts and
26 proportions of the payments are discretionary with the
27 court, but the court shall consider all of the following:

28 (1) The amount of surplus income available after
29 adequate provision has been made for the comfortable
30 and suitable support, maintenance, and education of the
31 conservatee and of those legally entitled to support,
32 maintenance, or education from the conservatee.

33 (2) The circumstances and condition of life to which
34 the conservatee and the spouse or domestic partner and
35 relatives have been accustomed.

36 (3) The amount that the conservatee would in the
37 judgment of the court have allowed the spouse or
38 domestic partner and relatives but for the existence of the
39 conservatorship.

1 (c) Notice of the hearing on the petition shall be given
2 for the period and in the manner provided in Chapter 3
3 (commencing with Section 1460) of Part 1.

4 SEC. 22. Section 2430 of the Probate Code is amended
5 to read:

6 2430. (a) Subject to subdivisions (b) and (c), the
7 guardian or conservator shall pay the following from any
8 principal and income of the estate:

9 (1) The debts incurred by the ward or conservatee
10 before creation of the guardianship or conservatorship,
11 giving priority to the debts described in Section 2431 to
12 the extent required by that section.

13 (2) The debts incurred by the ward or conservatee
14 during the guardianship or conservatorship to provide
15 the necessities of life to the ward or conservatee, and to
16 the spouse and minor children of the ward or
17 conservatee, to the extent the debt is reasonable. Also, the
18 debts reasonably incurred by the conservatee during the
19 conservatorship to provide the basic living expenses, as
20 defined in Section 297 of the Family Code, to the domestic
21 partner of the conservatee. The guardian or conservator
22 may deduct the amount of any payments for these debts
23 from any allowance otherwise payable to the ward or
24 conservatee.

25 (3) In the case of a conservatorship, any other debt
26 incurred by the conservatee during the conservatorship
27 only if the debt satisfies the requirements of any order
28 made under Chapter 4 (commencing with Section 1870)
29 of Part 3.

30 (4) The reasonable expenses incurred in the
31 collection, care, and administration of the estate, but
32 court authorization is required for payment of
33 compensation to any of the following:

34 (A) The guardian or conservator of the person or
35 estate or both.

36 (B) An attorney for the guardian or conservator of the
37 person or estate or both.

38 (C) An attorney for the ward or conservatee.

39 (D) An attorney for the estate.

(E) The public guardian for the costs and fee under Section 2902.

(b) The payments provided for by paragraph (3) of subdivision (a) are not required to be made to the extent the payments would impair the ability to provide the necessities of life to the conservatee and the spouse and minor children of the conservatee and to provide the basic living expenses, as defined in Section 297 of the Family Code, of the domestic partner of the conservatee.

(c) The guardian or conservator may petition the court under Section 2403 for instructions when there is doubt whether a debt should be paid under this section.

SEC. 23. Section 2504 of the Probate Code is amended to read:

2504. Court approval is required for the compromise or settlement of any of the following:

(a) A claim for the support, maintenance, or education of (1) the ward or conservatee, or (2) a person whom the ward or conservatee is legally obligated to support, maintain, or educate, against any other person (including, but not limited to, the spouse or parent of the ward or the spouse, domestic partner, parent, or adult child of the conservatee).

(b) A claim of the ward or conservatee for wrongful death.

(c) A claim of the ward or conservatee for physical or nonphysical harm to the person.

SEC. 24. Section 2572 of the Probate Code is amended to read:

2572. An order authorizing the guardian or conservator to purchase real property may authorize the guardian or conservator to join with the spouse of the ward or the spouse or domestic partner of the conservatee or with any other person or persons in the purchase of the real property, or an interest, equity, or estate therein, in severalty, in common, in community, or in joint tenancy, for cash or upon a credit or for part cash and part credit. When the court authorizes the purchase of real property, the court may order the guardian or

1 conservator to execute all necessary instruments and
2 commitments to complete the transaction.

3 SEC. 25. Section 2580 of the Probate Code is amended
4 to read:

5 2580. (a) The conservator or other interested person
6 may file a petition under this article for an order of the
7 court authorizing or requiring the conservator to take a
8 proposed action for any one or more of the following
9 purposes:

10 (1) Benefiting the conservatee or the estate.

11 (2) Minimizing current or prospective taxes or
12 expenses of administration of the conservatorship estate
13 or of the estate upon the death of the conservatee.

14 (3) Providing gifts for any purposes, and to any
15 charities, relatives (including the other spouse or
16 domestic partner), friends, or other objects of bounty, as
17 would be likely beneficiaries of gifts from the
18 conservatee.

19 (b) The action proposed in the petition may include,
20 but is not limited to, the following:

21 (1) Making gifts of principal or income, or both, of the
22 estate, outright or in trust.

23 (2) Conveying or releasing the conservatee's
24 contingent and expectant interests in property, including
25 marital property rights and any right of survivorship
26 incident to joint tenancy or tenancy by the entirety.

27 (3) Exercising or releasing the conservatee's powers as
28 donee of a power of appointment.

29 (4) Entering into contracts.

30 (5) Creating for the benefit of the conservatee or
31 others, revocable or irrevocable trusts of the property of
32 the estate, which trusts may extend beyond the
33 conservatee's disability or life. A special needs trust for
34 money paid pursuant to a compromise or judgment for a
35 conservatee may be established only under Chapter 4
36 (commencing with Section 3600) of Part 8, and not under
37 this article.

38 (6) Transferring to a trust created by the conservator
39 or conservatee any property unintentionally omitted
40 from the trust.



1 (7) Exercising options of the conservatee to purchase
2 or exchange securities or other property.

3 (8) Exercising the rights of the conservatee to elect
4 benefit or payment options, to terminate, to change
5 beneficiaries or ownership, to assign rights, to borrow, or
6 to receive cash value in return for a surrender of rights
7 under any of the following:

8 (A) Life insurance policies, plans, or benefits.

9 (B) Annuity policies, plans, or benefits.

10 (C) Mutual fund and other dividend investment plans.

11 (D) Retirement, profit sharing, and employee welfare
12 plans and benefits.

13 (9) Exercising the right of the conservatee to elect to
14 take under or against a will.

15 (10) Exercising the right of the conservatee to disclaim
16 any interest that may be disclaimed under Part 8
17 (commencing with Section 260) of Division 2.

18 (11) Exercising the right of the conservatee (A) to
19 revoke a revocable trust or (B) to surrender the right to
20 revoke a revocable trust, but the court shall not authorize
21 or require the conservator to exercise the right to revoke
22 a revocable trust if the instrument governing the trust (i)
23 evidences an intent to reserve the right of revocation
24 exclusively to the conservatee, (ii) provides expressly
25 that a conservator may not revoke the trust, or (iii)
26 otherwise evidences an intent that would be inconsistent
27 with authorizing or requiring the conservator to exercise
28 the right to revoke the trust.

29 (12) Making an election referred to in Section 13502 or
30 an election and agreement referred to in Section 13503.

31 (13) Making a will.

32 *SEC. 25.5. Section 2580 of the Probate Code is*
33 *amended to read:*

34 2580. (a) The conservator or other interested person
35 may file a petition under this article for an order of the
36 court authorizing or requiring the conservator to take a
37 proposed action for any one or more of the following
38 purposes:

39 (1) Benefiting the conservatee or the estate.

1 (2) Minimizing current or prospective taxes or
2 expenses of administration of the conservatorship estate
3 or of the estate upon the death of the conservatee.

4 (3) Providing gifts for any purposes, and to any
5 charities, relatives (including the other spouse *or*
6 *domestic partner*), friends, or other objects of bounty, as
7 would be likely beneficiaries of gifts from the
8 conservatee.

9 (b) The action proposed in the petition may include,
10 but is not limited to, the following:

11 (1) Making gifts of principal or income, or both, of the
12 estate, outright or in trust.

13 (2) Conveying or releasing the conservatee's
14 contingent and expectant interests in property, including
15 marital property rights and any right of survivorship
16 incident to joint tenancy or tenancy by the entirety.

17 (3) Exercising or releasing the conservatee's powers as
18 donee of a power of appointment.

19 (4) Entering into contracts.

20 (5) Creating for the benefit of the conservatee or
21 others, revocable or irrevocable trusts of the property of
22 the estate, which trusts may extend beyond the
23 conservatee's disability or life. A special needs trust for
24 money paid pursuant to a compromise or judgment for a
25 conservatee may be established only under Chapter 4
26 (commencing with Section 3600) of Part 8, and not under
27 this article.

28 (6) Transferring to a trust created by the conservator
29 or conservatee any property unintentionally omitted
30 from the trust.

31 (7) Exercising options of the conservatee to purchase
32 or exchange securities or other property.

33 (8) Exercising the rights of the conservatee to elect
34 benefit or payment options, to terminate, to change
35 beneficiaries or ownership, to assign rights, to borrow, or
36 to receive cash value in return for a surrender of rights
37 under any of the following:

38 ~~(i)~~

39 (A) Life insurance policies, plans, or benefits.

40 ~~(ii)~~



1 (B) Annuity policies, plans, or benefits.

2 ~~(iii)~~

3 (C) Mutual fund and other dividend investment plans.

4 ~~(iv)~~

5 (D) Retirement, ~~profit-sharing~~ *profit-sharing*, and
6 employee welfare plans and benefits.

7 (9) Exercising the right of the conservatee to elect to
8 take under or against a will.

9 (10) Exercising the right of the conservatee to disclaim
10 any interest that may be disclaimed under Part 8
11 (commencing with Section 260) of Division 2.

12 (11) Exercising the right of the conservatee ~~(i)~~ (A) to
13 revoke *or modify* a revocable trust or ~~(ii)~~ (B) to
14 surrender the right to revoke *or modify* a revocable trust,
15 but the court shall not authorize or require the
16 conservator to exercise the right to revoke *or modify* a
17 revocable trust if the instrument governing the trust (i)
18 evidences an intent to reserve the right of revocation *or*
19 *modification* exclusively to the conservatee, (ii) provides
20 expressly that a conservator may not revoke *or modify* the
21 trust, or (iii) otherwise evidences an intent that would be
22 inconsistent with authorizing or requiring the
23 conservator to exercise the right to revoke *or modify* the
24 trust.

25 (12) Making an election referred to in Section 13502 or
26 an election and agreement referred to in Section 13503.

27 (13) Making a will.

28 SEC. 26. Section 2614.5 of the Probate Code is
29 amended to read:

30 2614.5. (a) If the guardian or conservator fails to file
31 an inventory and appraisal within the time allowed by law
32 or by court order, upon request of the ward or
33 conservatee, the spouse of the ward or the spouse or
34 domestic partner of the conservatee, any relative or
35 friend of the ward or conservatee, or any interested
36 person, the court shall order the guardian or conservator
37 to file the inventory and appraisal within the time
38 prescribed in the order or to show cause why the guardian
39 or conservator should not be removed. The person who
40 requested the order shall serve it upon the guardian or

1 conservator in the manner provided in Section 415.10 or
2 415.30 of the Code of Civil Procedure or in a manner as
3 is ordered by the court.

4 (b) If the guardian or conservator fails to file the
5 inventory and appraisal as required by the order within
6 the time prescribed in the order, unless good cause is
7 shown for not doing so, the court, on its own motion or on
8 petition, may remove the guardian or conservator,
9 revoke the letters of guardianship or conservatorship, and
10 enter judgment accordingly, and order the guardian or
11 conservator to file an account and to surrender the estate
12 to the person legally entitled thereto.

13 (c) The procedure provided in this section is optional
14 and does not preclude the use of any other remedy or
15 sanction when an inventory and appraisal is not timely
16 filed.

17 SEC. 27. Section 2622 of the Probate Code is amended
18 to read:

19 2622. The ward or conservatee, the spouse of the ward
20 or the spouse or domestic partner of the conservatee, any
21 relative or friend of the ward or conservatee, or any
22 creditor or other interested person may file written
23 objections to the account of the guardian or conservator,
24 stating the items of the account to which objection is
25 made and the basis for the objection.

26 SEC. 28. Section 2651 of the Probate Code is amended
27 to read:

28 2651. The ward or conservatee, the spouse of the ward
29 or the spouse or domestic partner of the conservatee, any
30 relative or friend of the ward or conservatee, or any
31 interested person may apply by petition to the court to
32 have the guardian or conservator removed. The petition
33 shall state facts showing cause for removal.

34 SEC. 29. Section 2653 of the Probate Code is amended
35 to read:

36 2653. (a) The guardian or conservator, the ward or
37 conservatee, the spouse of the ward or the spouse or
38 domestic partner of the conservatee, any relative or
39 friend of the ward or conservatee, and any interested



1 person, may appear at the hearing and support or oppose
2 the petition.

3 (b) If the court determines that cause for removal of
4 the guardian or conservator exists, the court may remove
5 the guardian or conservator, revoke the letters of
6 guardianship or conservatorship, and enter judgment
7 accordingly and, in the case of a guardianship or
8 conservatorship of the estate, order the guardian or
9 conservator to file an account and to surrender the estate
10 to the person legally entitled thereto. If the guardian or
11 conservator fails to file the account as ordered, the court
12 may compel the account pursuant to Section 2629.

13 SEC. 30. Section 2681 of the Probate Code is amended
14 to read:

15 2681. A petition for appointment of a successor
16 conservator may be filed by any of the following:

17 (a) The conservatee.

18 (b) The spouse or domestic partner of the
19 conservatee.

20 (c) A relative of the conservatee.

21 (d) Any interested state or local entity or agency of
22 this state or any interested public officer or employee of
23 this state or of a local public entity of this state.

24 (e) Any other interested person or friend of the
25 conservatee.

26 SEC. 31. Section 2682 of the Probate Code is amended
27 to read:

28 2682. (a) The petition shall request that a successor
29 conservator be appointed for the person or estate, or
30 both, and shall specify the name and address of the
31 proposed successor conservator and the name and
32 address of the conservatee.

33 (b) The petition shall set forth, so far as they are known
34 to the petitioner, the names and addresses of the spouse
35 or domestic partner and of the relatives of the
36 conservatee within the second degree.

37 (c) If the petition is filed by one other than the
38 conservatee, the petition shall state whether or not the
39 petitioner is a creditor or debtor of the conservatee.

(d) If the conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the conservatee is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the conservatee.

(f) The petition shall state whether or not the conservatee will be present at the hearing.

SEC. 32. Section 2687 of the Probate Code is amended to read:

2687. The conservatee, the spouse, the domestic partner, or any relative or friend of the conservatee, or any other interested person may appear at the hearing to support or oppose the petition.

SEC. 33. Section 2700 of the Probate Code is amended to read:

2700. (a) At any time after the issuance of letters of guardianship or conservatorship, the ward, if over 14 years of age or the conservatee, the spouse of the ward or the spouse or domestic partner of the conservatee, any relative or creditor of the ward or conservatee, or any other interested person, in person or by attorney, may file with the court clerk a written request for special notice.

(b) The request for special notice shall be so entitled and shall set forth the name of the person and the address to where notices shall be sent.

(c) Special notice may be requested of any one or more of the following matters:

(1) Petitions filed in the guardianship or conservatorship proceeding.

(2) Inventories and appraisals of property in the estate, including any supplemental inventories and appraisals.

(3) Accounts of the guardian or conservator.

(4) Proceedings for the final termination of the guardianship or conservatorship proceeding.

(d) Special notice may be requested of:

(1) Any one or more of the matters in subdivision (c) by describing the matter or matters.

(2) All the matters in subdivision (c) by referring generally to “the matters described in subdivision (c) of Section 2700 of the Probate Code” or by using words of similar meaning.

(e) A copy of the request shall be personally delivered or mailed to the guardian or conservator or to the attorney for the guardian or conservator. If personally delivered, the request is effective when it is delivered. If mailed, the request is effective when it is received.

(f) When the original of the request is filed with the court clerk, it shall be accompanied by a written admission or proof of service.

SEC. 34. Section 2803 of the Probate Code is amended to read:

2803. The petition shall set forth all of the following:

(a) The name and address of:

(1) The foreign guardian or conservator, who may but need not be the guardian or conservator appointed in this state.

(2) The ward or conservatee.

(3) The guardian or conservator, so far as is known to the petitioner.

(b) The names, ages, and addresses, so far as they are known to the petitioner, of the spouse of the ward or the spouse or domestic partner of the conservatee and of relatives of the ward or conservatee within the second degree.

(c) A brief description of the character, condition, value, and location of the personal property sought to be transferred.

(d) A statement whether the foreign guardian or conservator has agreed to accept the transfer of the property. If the foreign guardian or conservator has so agreed, the acceptance shall be attached as an exhibit to the petition or otherwise filed with the court.

1 (e) A statement of the manner in which and by whom
2 the foreign guardian or conservator was appointed.

3 (f) A general statement of the qualifications of the
4 foreign guardian or conservator.

5 (g) The amount of bond, if any, of the foreign guardian
6 or conservator.

7 (h) A general statement of the nature and value of the
8 property of the ward or conservatee already under the
9 management or control of the foreign guardian or
10 conservator.

11 (i) The name of the court having jurisdiction of such
12 foreign guardian or conservator or of the accounts of such
13 foreign guardian or conservator or, if none, the court in
14 which a proceeding may be had with respect to the
15 guardianship or conservatorship if the property is
16 transferred.

17 (j) Whether there is any pending civil action in this
18 state against the guardian or conservator, the ward or
19 conservatee, or the estate.

20 (k) A statement of the reasons for the transfer.

21 SEC. 35. Section 2805 of the Probate Code is amended
22 to read:

23 2805. Any of the following may appear and file
24 written objections to the petition:

25 (a) Any person required to be listed in the petition.

26 (b) Any creditor of the ward or conservatee or of the
27 estate.

28 (c) The spouse of the ward or the spouse or domestic
29 partner of the conservatee, or any relative or friend of the
30 ward or conservatee.

31 (d) Any other interested person.

32 SEC. 36. Section 6240 of the Probate Code is amended
33 to read:

34 6240. The following is the California Statutory Will
35 form:
36



QUESTIONS AND ANSWERS ABOUT THIS
CALIFORNIA STATUTORY WILL

The following information, in question and answer form, is not a part of the California Statutory Will. It is designed to help you understand about Wills and to decide if this Will meets your needs. This Will is in a simple form. The complete text of each paragraph of this Will is printed at the end of the Will.

1. *What happens if I die without a Will?* If you die without a Will, what you own (your “assets”) in your name alone will be divided among your spouse, children, or other relatives according to state law. The court will appoint a relative to collect and distribute your assets. A domestic partner will not have a right to inherit your property without a Will.

2. *What can a Will do for me?* In a Will you may designate who will receive your assets at your death. You may designate someone (called an “executor”) to appear before the court, collect your assets, pay your debts and taxes, and distribute your assets as you specify. You may nominate someone (called a “guardian”) to raise your children who are under age 18. You may designate someone (called a “custodian”) to manage assets for your children until they reach any age between 18 and 25.

3. *Does a Will avoid probate?* No. With or without a Will, assets in your name alone usually go through the court probate process. The court’s first job is to determine if your Will is valid.

4. *What is community property?* Can I give away my share in my Will? If you are married and you or your spouse earned money during your marriage from work and wages, that money (and the assets bought with it) is community property. Your Will can only give away your one-half of community property. Your Will cannot give away your spouse’s one-half of community property.

5. *Does my Will give away all of my assets?* Do all assets go through probate? No. Money in a joint tenancy bank account automatically belongs to the other named

1 owner without probate. If your spouse, domestic partner,
2 or child is on the deed to your house as a joint tenant, the
3 house automatically passes to him or her. Life insurance
4 and retirement plan benefits may pass directly to the
5 named beneficiary. A Will does not necessarily control
6 how these types of “nonprobate” assets pass at your death.

7 6. *Are there different kinds of Wills?* Yes. There are
8 handwritten Wills, typewritten Wills, attorney-prepared
9 Wills, and statutory Wills. All are valid if done precisely
10 as the law requires. You should see a lawyer if you do not
11 want to use this statutory Will or if you do not understand
12 this form.

13 7. *Who may use this Will?* This Will is based on
14 California law. It is designed only for California residents.
15 You may use this form if you are single, married, a
16 member of a domestic partnership, or divorced. You must
17 be age 18 or older and of sound mind.

18 8. *Are there any reasons why I should NOT use this*
19 *statutory Will?* Yes. This is a simple Will. It is not designed
20 to reduce death taxes or other taxes. Talk to a lawyer to
21 do tax planning, especially if (i) your assets will be worth
22 more than \$600,000 or the current amount excluded from
23 estate tax under federal law at your death, (ii) you own
24 business-related assets, (iii) you want to create a trust
25 fund for your children’s education or other purposes, (iv)
26 you own assets in some other state, (v) you want to
27 disinherit your spouse or descendants, or (vi) you have
28 valuable interests in pension or profit-sharing plans. You
29 should talk to a lawyer who knows about estate planning
30 if this Will does not meet your needs. This Will treats most
31 adopted children like natural children. You should talk to
32 a lawyer if you have stepchildren or foster children whom
33 you have not adopted.

34 9. *May I add or cross out any words on this Will?* No.
35 If you do, the Will may be invalid or the court may ignore
36 the crossed out or added words. You may only fill in the
37 blanks. You may amend this Will by a separate document
38 (called a codicil). Talk to a lawyer if you want to do
39 something with your assets which is not allowed in this
40 form.



1 10. *May I change my Will?* Yes. A Will is not effective
2 until you die. You may make and sign a new Will. You may
3 change your Will at any time, but only by an amendment
4 (called a codicil). You can give away or sell your assets
5 before your death. Your Will only acts on what you own
6 at death.

7 11. *Where should I keep my Will?* After you and the
8 witnesses sign the Will, keep your Will in your safe deposit
9 box or other safe place. You should tell trusted family
10 members where your Will is kept.

11 12. *When should I change my Will?* You should make
12 and sign a new Will if you marry or divorce after you sign
13 this Will. Divorce or annulment automatically cancels all
14 property stated to pass to a former husband or wife under
15 this Will, and revokes the designation of a former spouse
16 as executor, custodian, or guardian. You should sign a new
17 Will when you have more children, or if your spouse or a
18 child dies, or a domestic partner dies or marries. You may
19 want to change your Will if there is a large change in the
20 value of your assets. You may also want to change your
21 Will if you enter a domestic partnership or your domestic
22 partnership has been terminated after you sign this Will.

23 13. *What can I do if I do not understand something in*
24 *this Will?* If there is anything in this Will you do not
25 understand, ask a lawyer to explain it to you.

26 14. *What is an executor?* An “executor” is the person
27 you name to collect your assets, pay your debts and taxes,
28 and distribute your assets as the court directs. It may be
29 a person or it may be a qualified bank or trust company.

30 15. *Should I require a bond?* You may require that an
31 executor post a “bond.” A bond is a form of insurance to
32 replace assets that may be mismanaged or stolen by the
33 executor. The cost of the bond is paid from the estate’s
34 assets.

35 16. *What is a guardian?* Do I need to designate one? If
36 you have children under age 18, you should designate a
37 guardian of their “persons” to raise them.

38 17. *What is a custodian?* Do I need to designate one?
39 A “custodian” is a person you may designate to manage
40 assets for someone (including a child) who is between



1 ages 18 and 25 and who receives assets under your Will.
2 The custodian manages the assets and pays as much as the
3 custodian determines is proper for health, support,
4 maintenance, and education. The custodian delivers
5 what is left to the person when the person reaches the age
6 you choose (between 18 and 25). No bond is required of
7 a custodian.

8 18. *Should I ask people if they are willing to serve*
9 *before I designate them as executor, guardian, or*
10 *custodian?* Probably yes. Some people and banks and
11 trust companies may not consent to serve or may not be
12 qualified to act.

13 19. *What happens if I make a gift in this Will to*
14 *someone and they die before I do?* A person must survive
15 you by 120 hours to take a gift under this Will. If they do
16 not, then the gift fails and goes with the rest of your assets.
17 If the person who does not survive you is a relative of you
18 or your spouse, then certain assets may go to the relative's
19 descendants.

20 20. *What is a trust?* There are many kinds of trusts,
21 including trusts created by Wills (called “testamentary
22 trusts”) and trusts created during your lifetime (called
23 “revocable living trusts”). Both kinds of trusts are
24 long-term arrangements where a manager (called a
25 “trustee”) invests and manages assets for someone
26 (called a “beneficiary”) on the terms you specify. Trusts
27 are too complicated to be used in this statutory Will. You
28 should see a lawyer if you want to create a trust.

29 21. *What is a domestic partner?* You have a domestic
30 partner if you have met certain legal requirements and
31 filed a form entitled “Declaration of Domestic
32 Partnership” with the Secretary of State. —If
33 *Notwithstanding Section 299.6 of the Family Code, if you*
34 *have not filed a Declaration of Domestic Partnership with*
35 *the Secretary of State, you do not meet the required*
36 *definition and should not use the section of the Statutory*
37 *Will form that refers to domestic partners even if you*
38 *have registered your domestic partnership with another*
39 *governmental entity.* If you are unsure if you have a
40 domestic partner or if your domestic partnership meets



1 the required definition, please contact the Secretary of
2 State's office.

3

4

INSTRUCTIONS

5

6 1. *READ THE WILL.* Read the whole Will first. If you
7 do not understand something, ask a lawyer to explain it
8 to you.

9 2. *FILL IN THE BLANKS.* Fill in the blanks. Follow the
10 instructions in the form carefully. Do not add any words
11 to the Will (except for filling in blanks) or cross out any
12 words.

13 3. *DATE AND SIGN THE WILL AND HAVE TWO*
14 *WITNESSES SIGN IT.* Date and sign the Will and have
15 two witnesses sign it. You and the witnesses should read
16 and follow the Notice to Witnesses found at the end of this
17 Will.



NOTE TO PRINTING OFFICE: INSERT
CAMERA-READY COPY HERE WITH NO CHANGES

for California Statutory Will

as printed on pages 17 to 22 of Chapter 1055, 1991
Statutes.

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1 SEC. 37. Section 20.5 of this bill incorporates
2 amendments to Section 2357 of the Probate Code
3 proposed by both this bill and AB 239. It shall only become
4 operative if (1) both bills are enacted and become
5 effective on or before January 1, 2000, (2) each bill
6 amends Section 2357 of the Probate Code, and (3) this bill
7 is enacted after AB 239, in which case Section 20 of this bill
8 shall not become operative.

9 SEC. 38. Section 25.5 of this bill incorporates
10 amendments to Section 2580 of the Probate Code
11 proposed by both this bill and AB 239. It shall only become
12 operative if (1) both bills are enacted and become
13 effective on or before January 1, 2000, (2) each bill
14 amends Section 2580 of the Probate Code, and (3) this bill
15 is enacted after AB 239, in which case Section 25 of this bill
16 shall not become operative.

17 SEC. 39. Notwithstanding Section 17610 of the
18 Government Code, if the Commission on State Mandates
19 determines that this act contains costs mandated by the
20 state, reimbursement to local agencies and school
21 districts for those costs shall be made pursuant to Part 7
22 (commencing with Section 17500) of Division 4 of Title
23 2 of the Government Code. If the statewide cost of the
24 claim for reimbursement does not exceed one million
25 dollars (\$1,000,000), reimbursement shall be made from
26 the State Mandates Claims Fund.

